

Ryan G. Baker (Bar No. 214036)
rbaker@waymakerlaw.com
Teresa L. Huggins (Bar No. 263257)
thuggins@waymakerlaw.com
Jose R. Nuño (Bar No. 312832)
jnuno@waymakerlaw.com
WAYMAKER LLP
515 S. Flower Street, Suite 3500
Los Angeles, California 90071
Telephone: (424) 652-7800
Facsimile: (424) 652-7850

*Attorneys for Defendant
Sunnova Energy Corporation*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

LUIS ACEVEDO,

Plaintiff,

v.

SUNNOVA ENERGY
CORPORATION; and DOES 1
through 20, inclusive,

Defendant.

Case No. 5:23-cv-02436-MRA-DTBx

**REPLY IN SUPPORT OF
DEFENDANT SUNNOVA ENERGY
CORPORATION'S MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6)**

The Honorable Mónica Ramírez
Almadani

Complaint Filed: November 30, 2023

Hearing: April 11, 2024
Time: 1:30 p.m.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. ARGUMENT	2
A. The Fraudulent Concealment Claim Fails (First Cause of Action)	2
1. No Authorization is Alleged	3
a. The Fact That Kuubix Sold Sunnova Products Is Not Sufficient to Allege an Agency Relationship.....	3
b. Plaintiff Fails To Allege That Mostafa or Kuubix Acted Within the Scope of Their Alleged Authorization	6
2. No Ratification Is Alleged.....	7
B. The Negligence Claim (Second Cause of Action) Is Also Deficient	9
C. Plaintiff Fails to State a CLRA Claim (Third Cause of Action).....	9
D. The FCRA Claim Fails (Fourth Cause of Action)	10
E. The Rosenthal Act Claim Is Too Conclusory To Survive a Motion to Dismiss (Fifth Cause of Action)	12
F. Plaintiff's HSSA Claim Fails (Sixth Cause of Action).....	13
G. Plaintiff Fails to State a Claim under Business and Professions Code § 7150, <i>et seq.</i> (Seventh Cause of Action)	14
H. Plaintiff Fails to State a Claim Under the UCL, Bus. & Prof. Code § 17200, <i>et seq.</i> (Eighth Cause of Action)	15
III. CONCLUSION	15

TABLE OF AUTHORITIES

Cases

<i>Airs Aromatics, LLC v. Victoria's Secret Stores Brand Mgmt., Inc.</i> , 744 F.3d 595 (9th Cir. 2014)	3
<i>Allen v. Dollar Tree Stores, Inc.</i> , 475 F. App'x. 159 (9th Cir. 2012)	passim
<i>Alvarez v. Felker Mfg. Co.</i> , 230 Cal. App. 2d 987 (1964)	4
<i>Ashcroft v. Iqbal</i> , 566 U.S. 662 (2009)	13, 14
<i>Brown v. Rouse</i> , 104 Cal. 672 (1894)	9
<i>Certain Underwriters at Lloyd's London v. ConAgra Grocery Products Co., LLC</i> , 77 Cal. App. 5th 729 (2022)	6
<i>Danfer-Klaben v. JPMorgan Chase Bank, N.A.</i> , No. SACV 21-262 PSG (JDEx), 2022 WL 3012528 (C.D. Cal. Jan. 24, 2022)	11, 12
<i>Gallagher v. Cal. Pacific Title & Trust Co.</i> , 13 Cal. App. 2d 482 (1939)	8
<i>Graham v. Sunnova Energy Int'l, Inc.</i> , No. 1:22-cv-0622 JLT BAM, 2024 WL 871858 (E.D. Cal. Feb. 28, 2024)	11
<i>Helber v. Nationwide Credit, Inc.</i> , No. SACV 09-1394 AG (ANx), 2010 WL 11595725 (C.D. Cal. Mar. 4, 2010)	13
<i>Hospitality Marketing Concepts, LLC v. Six Continents Hotels, Inc.</i> , No. SACV 15-01791 JVS (DFMx), 2016 WL 9045621 (C.D. Cal. Jan. 28, 2016)	2
<i>Industrial Indem. Co. v. Golden State Co.</i> , 117 Cal. App. 2d 519 (1953)	7
<i>Kristensen v. Credit Payment Servs. Inc.</i> , 879 F.3d 1010 (9th Cir. 2018)	7
<i>Leap Imports LLC v. Anker Innovations, Ltd.</i> , No. 2:20-cv-03598-SVW-AS, 2020 WL 13281783 (C.D. Cal. Aug. 14, 2020)	8
<i>Makreas v. Moore L. Group, A.P.C.</i> , No. C-11-2406 MMC, 2012 WL 359710 (N.D. Cal. Feb. 2, 2012)	4

1	<i>Michelson v. Hamada</i> ,	
2	29 Cal. App. 4th 1566 (1994)	5
3	<i>Miller v. Sawant</i> ,	
4	18 F. 4th 328 (9th Cir. 2021)	5
5	<i>Miyayama v. Burke</i> ,	
6	No. 2:20-cv-01683-DJA,	
7	2022 WL 1665211 (D. Nev. May 25, 2022)	5
8	<i>Murphy v. DirecTV, Inc.</i> ,	
9	724 F.3d 1218 (9th Cir. 2013)	4
10	<i>Nayab v. Cap. One Bank (USA), N.A.</i> ,	
11	942 F.3d 480 (9th Cir. 2019)	10, 11, 12
12	<i>Phleger v. Countrywide Home Loans</i> ,	
13	No. C 07-01686 SBA,	
14	2009 WL 537189 (2009)	7
15	<i>Pluto Sama Holdings, Inc. v. Jagex Ltd.</i> ,	
16	No. SACV 21-133 JVS (JDEx),	
17	2022 WL 1536590 (C.D. Cal. Jan. 12, 2022)	7
18	<i>Reusche v. Cal. Pacific Title Ins. Co.</i> ,	
19	231 Cal. App. 2d 731, 737 (1965)	8
20	<i>Rogers v. Postmates, Inc.</i> ,	
21	No. 19-cv-05619-TSH,	
22	2020 WL 3869191 (N.D. Cal. July 9, 2020)	4
23	<i>Sandry v. First Franklin Financial Corp.</i> ,	
24	No. 1:10-cv-01923-OWW-SKO,	
25	2011 WL 202285 (E.D. Cal. 2011)	9
26	<i>Stone v. Friedman</i> ,	
27	No. CV 22-2486-JFW (ASx),	
28	2022 WL 3012213 (C.D. Cal. May 27, 2022)	4, 5
	<i>Townsend v. Chase Bank</i> ,	
	No. SACV08-00527 AG (ANx),	
	2009 WL 426393 (C.D. Cal. Feb. 15, 2009)	12, 13
	<i>UFCW & Employers Benefit Trust v. Sutter Health</i> ,	
	241 Cal. App. 4th 909 (2015)	7
	<i>United States v. Graf</i> ,	
	610 F.3d 1148 (9th Cir. 2010)	15
	<i>Varela v. Wells Fargo Home Mortg.</i> ,	
	No. C-12-3502 KAW,	
	2012 WL 6680261, (N.D. Cal. Dec. 21, 2012)	6
	<i>Veera v. Banana Republic, LLC</i> ,	
	6 Cal. App. 5th 907 (2016)	15

1 *Weatherall Aluminum Prod. Co. v. Scott*,
71 Cal. App. 3d 245 (1977) 14

2 **Statutes**

3 15 U.S.C. § 1681b..... 12, 13, 14, 15

4 Bus. & Prof. Code § 7150..... 1, 14

5 Bus. & Prof. Code § 7161..... 14

6 Bus. & Prof. Code § 17200..... 15

7 Cal. Civ. Code §§ 7151, 7151.2 13

8 Cal. Civ. Code § 1689.6..... 13, 14

WAYMAKER

I. INTRODUCTION

Plaintiff Luis Acevedo (“Plaintiff”) fails to address the majority of the arguments that Defendant Sunnova Energy Corporation (“Sunnova”) made in its Motion to Dismiss, any of which is dispositive to the relevant claim, requiring dismissal of his First Amended Complaint (“FAC”) in full. *See Allen v. Dollar Tree Stores, Inc.*, 475 F. App’x. 159, 159 (9th Cir. 2012) (affirming dismissal of claims as “proper[] . . . because [plaintiff’s] opposition to the motion to dismiss failed to respond to [defendant’s] argument”).

Plaintiff admits that his First, Second, Third, Seventh and Eighth Causes of Action (fraudulent concealment, negligence, violations of the CLRA, UCL, and Business and Professions Code § 7150, *et seq.*) depend on a theory of agency. Specifically, Plaintiff argues that Sunnova is liable for the fraud of third-party Kuubix Global, LLC (“Kuubix”) and its salesman Mostafa Shaheen (“Mostafa”) because Sunnova purportedly (1) authorized their acts, and/or (2) ratified them. But the fact that a third party sells Sunnova products is insufficient to allege it is an agent of Sunnova. Moreover, even if an agency relationship is sufficiently alleged, Sunnova is not liable for acts that occurred outside the scope of the alleged authorization it purportedly gave those parties – an argument that Plaintiff fails to address and has therefore waived. Here, Plaintiff alleges that Mostafa and Kuubix flouted all of Sunnova’s alleged directives in their interactions with Plaintiff, concealing from Plaintiff that they were selling Sunnova products, the fact of a written contract, and even Sunnova’s existence, thus precluding Sunnova’s liability under a theory of authorization as a matter of law. Plaintiff also fails to address Sunnova’s argument that no agency was created by ratification because the FAC contains no allegations that Sunnova had “full knowledge of all material facts” at the time it allegedly ratified Mostafa and Kuubix’s acts, as ratification requires.

The three claims that do not depend on agency are not sufficiently pled either. Plaintiff’s Fair Credit Reporting Act claim fails because Plaintiff does not and

1 cannot allege that Sunnova did not have a reasonable belief that it had a permissible
2 purpose to access Plaintiff's credit report at the time that it did so – another
3 argument that Plaintiff fails to address. Plaintiff also fails to address that the
4 allegation that “a debt is not owing,” which is all Plaintiff alleges here, is a legal
5 conclusion and not sufficient to allege a violation of the Rosenthal Act. Finally,
6 Plaintiff's HSSA claim fails for failure to provide sufficient factual allegations that
7 Sunnova committed an act in violation of the statute.

8 The Court should dismiss Plaintiff's deficient FAC in its entirety.

9 **II. ARGUMENT**

10 **A. The Fraudulent Concealment Claim Fails (First Cause of Action)**

11 Plaintiff admits that his fraudulent concealment claim depends on a theory of
12 agency (Opp. 10-17), but is incorrect that this means the Court must rubber stamp
13 the claim because agency is “fact-dependent and thus not suitable for resolution on a
14 motion to dismiss” (*see id.* 9). To the contrary, district courts routinely grant
15 motions to dismiss, where, as here, agency is not sufficiently alleged. *See*
16 *Hospitality Marketing Concepts, LLC v. Six Continents Hotels, Inc.*, 2016 WL
17 9045621, at *3 (C.D. Cal. Jan. 28, 2016) (granting motion to dismiss because
18 elements of agency “must be pled to proceed against a defendant based on agency
19 theory”).

20 And dismissal is warranted here. Plaintiff admits that he agreed to the
21 installation of solar panels on his roof based *solely* on statements made to him by
22 third-party salesman Mostafa about the value of solar panels and that Plaintiff had
23 no interaction with Sunnova whatsoever (and did not even know that Sunnova
24 existed) until months *after* he agreed to the installation. (FAC ¶¶ 43-53.) Plaintiff
25 claims that Sunnova nonetheless must be held liable for Mostafa's alleged
26 concealment of the true cost of the panels and the fact of the PPA because Sunnova
27 (1) “authorized” Mostafa's acts by allowing his employer, Kuubix, to sell Sunnova
28 products, and (2) even if Sunnova did not authorize Kuubix and Mostafa's acts, it

1 ratified those acts by failing to immediately cancel the PPA the minute Plaintiff
2 asked. (Opp. 10-17.) Both arguments fail as a matter of law.¹

3 **1. No Authorization is Alleged**

4 Plaintiff has failed to allege agency by authorization for two reasons: (1) the
5 fact that Kuubix sold Sunnova products, which is all that is alleged here, is
6 insufficient to allege agency; and (2) even if agency is alleged, Plaintiff fails to
7 allege that Kuubix and Mostafa acted within the scope of the authorization
8 purportedly given to them by Sunnova.

9 **a. The Fact That Kuubix Sold Sunnova Products Is Not**
10 **Sufficient to Allege an Agency Relationship**

11 In support of Plaintiff's claim that Kuubix and Mostafa were agents of
12 Sunnova, Plaintiff merely rehashes the allegations in the FAC of the purported
13 "Sunnova Program," in which Sunnova allowed certain third-party installers,
14 including Kuubix, to sell Sunnova products and required them to use sales
15 presentations and Sunnova forms and contracts, with specific terms and conditions.
16 (See Opp. at 12 (citing FAC ¶¶ 14, 26, 34).)

17 But the mere fact that a company allows another company to sell its products
18 is insufficient to allege agency as a matter of law. Plaintiff fails to address *any* of
19 Sunnova's authority on this point, merely claiming that the allegations in the FAC
20 about the Sunnova Program are sufficient to allege Sunnova had the right to control
21 Kuubix and Mostafa. (*Compare* Mot. 10 with Opp. 11-12.) But federal and state

22 _____
23 ¹ Plaintiff claims that Sunnova is "incorrect" that the allegations in the FAC
24 contradict those in the Complaint. (Opp. 11, n. 3.) But the Complaint's allegations
25 that Sunnova "exercises virtually no oversight over [the third-party contractor's]
26 activities," (Dkt. No. 1 (Compl. ¶ 35)), directly contradict the FAC's allegations that
27 Sunnova "controls the marketing and sales tactics that its partners use" and "has
28 ostensible control over all aspects of the [purported] Sunnova Program" (FAC ¶¶ 26,
32). *See Airs Aromatics, LLC v. Victoria's Secret Stores Brand Mgmt., Inc.*, 744
F.3d 595, 600 (9th Cir. 2014) ("[a] party cannot amend pleadings to 'directly
contradict an earlier assertion made in the same proceeding.'").

1 courts alike agree that the right to control sufficient to establish an agency
2 relationship is *not* alleged where, as here, a company merely enlists a third party to
3 sell its product; the mere fact of a commercial relationship is not sufficient to allege
4 the requisite right to control. *See Rogers v. Postmates, Inc.*, 2020 WL 3869191, at
5 *4 (N.D. Cal. July 9, 2020) (“[a]n allegation of a beneficial contractual relationship
6 alone is insufficient to establish agency”) (internal citations and quotations omitted);
7 *see also Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1232 (9th Cir. 2013) (applying
8 California law) (“Generally, retailers are not considered the agents of the
9 manufacturers whose products they sell.”) (citing Rest. 3d Agency (2006) § 1.01,
10 com. g); *Alvarez v. Felker Mfg. Co.*, 230 Cal. App. 2d 987, 1000 (1964) (“One who
11 receives goods from another for resale to a third person is not thereby the other’s
12 agent in the transaction: whether he is an agent for this purpose or is himself a buyer
13 depends upon whether the parties agree that his duty is to act primarily for the
14 benefit of the one delivering the goods to him or is to act primarily for his own
15 benefit.”) (internal citations and quotations omitted).

16 In *Stone v. Friedman*, the district court found allegations of agency
17 inadequate where, like Plaintiff here, the plaintiff alleged the defendant had
18 “authorized” an agent’s activities (debt collection) but had failed to allege sufficient
19 facts showing that the defendant had “directed or controlled them,” or had the right
20 to do so. 2022 WL 3012213, at *4 (C.D. Cal. May 27, 2022) (citations omitted); *see*
21 *also Fenton v. Freedman*, 748 F.2d 1358, 1361-62 (9th Cir. 1984) (applying
22 California law) (finding art consultant was not agent of client where right to control
23 was not sufficiently established); *Makreas v. Moore L. Group, A.P.C.*, 2012 WL
24 359710 at *7 (N.D. Cal. Feb. 2, 2012) (granting motion to dismiss where plaintiff
25 alleged “no facts to support a finding that Citibank, having entered into an
26 agreement with Moore under which Moore would attempt to collect a debt
27 assertedly owed by Makreas to Citibank, had the right to control the activities of
28 Moore”). As in *Stone*, *Fenton* and *Makreas*, allegations that Kuubix was one of

1 many third-party installers who sold Sunnova products in the “Sunnova Program”
2 using Sunnova electronic forms and contracts, with certain terms and conditions, is
3 insufficient to allege that Sunnova directed or controlled Kuubix and its salesman’s
4 activities, or had the right to do so, as agency requires. (FAC ¶ 34(1), (2), (3), (5));
5 *see Stone*, 2022 WL 3012213, at *4.²

6 Plaintiff’s argument that he has sufficiently alleged the requisite right to
7 control because Sunnova purportedly retained the right to “terminate its relationship
8 with its partners” is equally unavailing. (*See* Opp. 12 (citing FAC ¶ 34.) The FAC
9 only alleges that Sunnova had the right to stop Kuubix and its sales agents from
10 selling Sunnova products and to “discipline” them in unspecified ways, not that it
11 had the right to terminate them from employment. (*See* FAC ¶¶ 34(4), (6).)
12 *Michelson v. Hamada*, relied on by Plaintiff (Opp. 12), is therefore distinguishable
13 because, in that case, the court held that two surgeons had entered an agency
14 relationship where one surgeon was completely reliant on the other and a fiduciary
15 duty that went “beyond a mere contractual relationship” had arisen between the two,
16 none of which is alleged here. 29 Cal. App. 4th 1566, 1580-1581 (1994).

17 Notably, Plaintiff also fails to address any of Sunnova’s arguments as to why
18 Sunnova is not liable under a theory of apparent or ostensible agency (Mot. 14), and
19 so has waived that argument, as well. *See Allen*, 475 F. App’x. at 159. Nor could he
20 make such an argument. Plaintiff alleges that Mostafa “did not tell Plaintiff that he
21

22 _____
23 ² Plaintiff is held to federal pleading standards for all causes of action, including
24 those based on agency, and his conclusory allegations are insufficient. *See Miller v.*
25 *Sawant*, 18 F. 4th 328, 337 (9th Cir. 2021) (explaining that federal pleading
26 standards, not state, apply in federal court); *see also Miyayama v. Burke*, 2022 WL
27 1665211, at *4 (D. Nev. May 25, 2022) (granting 12(b)(6) motion to dismiss and
28 recognizing federal pleading standards, not state, applied to agency allegations in
diversity action). Federal and state law is substantially the same on the agency issues
relevant here, and Sunnova cites both sets of law to prove the point, where
applicable.

1 was with either Kuubix or SUNNOVA” (FAC ¶ 43) and admits he had no idea that
2 Sunnova even existed until months *after* the Solar System was installed and
3 operational (*id.* ¶ 52). *See Varela v. Wells Fargo Home Mortg.*, 2012 WL 6680261,
4 at *6 (N.D. Cal. Dec. 21, 2012) (applying California law) (dismissing complaint
5 without leave to amend where allegations did not show that bank “caused Plaintiffs
6 to believe that the broker was acting as its agent”).

7 **b. Plaintiff Fails To Allege That Mostafa or Kuubix Acted**
8 **Within the Scope of Their Alleged Authorization**

9 Even assuming Plaintiff has sufficiently alleged an agency relationship,
10 Sunnova is still not liable for acts Mostafa and Kuubix committed *outside* the scope
11 of the authorization allegedly given to them by Sunnova – another argument that
12 Plaintiff fails to address. *See Certain Underwriters at Lloyd’s London v. ConAgra*
13 *Grocery Products Co., LLC*, 77 Cal. App. 5th 729, 730 (2022) (“[a] principal is
14 chargeable with and is bound by the knowledge of, or notice to, his agent received
15 while the agent is acting within the scope of his authority and which is with
16 reference to a matter over which his authority extends”); *see Allen*, 475 F. App’x. at
17 159 (plaintiff waived arguments it did not address in opposition).

18 Plaintiff likely did not address the argument because he cannot. As the
19 Opposition acknowledges (Opp. 10-13), Plaintiff alleges that Sunnova’s
20 authorization of Kuubix and Mostafa’s acts derives entirely from Kuubix’s
21 participation in the purported Sunnova Program through which it was allowed to sell
22 Sunnova products. (*Id.* (citing FAC ¶¶ 14, 26, 28-36).) But Plaintiff fails to allege
23 that Mostafa or Kuubix acted within the scope of the authorization purportedly
24 given to them by Sunnova. The FAC contains no allegations showing that Mostafa
25 and Kuubix marketed and sold Sunnova products, using the requisite Sunnova
26 contracts, forms, and terms and conditions, as the Sunnova Program required them
27 to do. Instead, Plaintiff alleges they flouted the Sunnova Program entirely,
28 withholding from Plaintiff that they were selling Sunnova products, the existence of

1 any contract with Sunnova, or that Sunnova even existed at all. (*See* FAC ¶¶ 34, 43-
2 55.) Plaintiff’s contradictory and deficient allegations are plainly insufficient to
3 allege authorization as a matter of law. *See Pluto Sama Holdings, Inc. v. Jagex Ltd.*,
4 2022 WL 1536590, at *6 (C.D. Cal. Jan. 12, 2022) (applying California law)
5 (granting motion to dismiss in part because the “entire premise of the complaint is
6 the exact opposite” of an actual authority theory); *Phleger v. Countrywide Home*
7 *Loans*, 2009 WL 537189, at *12 (N.D. Cal. Mar. 3, 2009) (applying California law)
8 (emphasis in original) (holding alleged agent would not be liable if he “*exceeded* the
9 scope of his actual authority”) (emphasis in original).

10 **2. No Ratification Is Alleged**

11 Plaintiff also fails to allege ratification. Plaintiff’s entire theory of ratification
12 hinges on his claim that Sunnova purportedly “ratified” Mostafa’s actions by failing
13 to cancel the PPA after Plaintiff purportedly gave Sunnova “notice of the fraud.”
14 (*See* Opp. 13 (citing FAC ¶¶ 35, 43).) But Plaintiff fails to address Sunnova’s
15 argument that a forged contract is illegal and cannot be ratified, thereby waiving any
16 argument to the contrary. (*See* Mot. 15); *see also Industrial Indem. Co. v. Golden*
17 *State Co.*, 117 Cal. App. 2d 519, 540 (1953) (“An illegal contract cannot be
18 ratified.”); *see Allen*, 475 F. App’x. at 159 (arguments not addressed are waived).

19 Plaintiff also fails to address that Sunnova cannot be liable under a theory of
20 ratification because Plaintiff fails to allege that Sunnova had “full knowledge” of the
21 alleged wrongdoing at the time it allegedly ratified Kuubix and Motsafa’s acts. (*See*
22 Mot. at 15); *see also Allen*, 475 F. App’x. at 159. It is axiomatic that, to state a claim
23 for agency by ratification, a plaintiff must allege the principal has full knowledge of
24 all material facts at the time of the alleged ratification. *See UFCW & Employers*
25 *Benefit Trust v. Sutter Health*, 241 Cal. App. 4th 909, 933 (2015) (“[a] principal
26 may ratify an agency with full knowledge of all the facts”); *accord Kristensen v.*
27 *Credit Payment Servs. Inc.*, 879 F.3d 1010, 1014 (9th Cir. 2018). Here, Plaintiff
28 only alleges that he told Sunnova that he wanted to cancel the PPA because of its

1 “fraudulent nature.” (FAC ¶¶ 55, 64.) Plaintiff fails to allege what he conveyed to
2 Sunnova that was sufficient to give it “full knowledge” of Kuubix and Mostafa’s
3 alleged acts so as to trigger liability under a theory of ratification. *See Leap Imports*
4 *LLC v. Anker Innovations, Limited*, 2020 WL 13281783, at *4 (C.D. Cal. Aug. 14,
5 2020) (applying California law) (allegations plaintiff notified company via letter
6 insufficient to allege ratification because “[f]ull knowledge . . . cannot be plausibly
7 inferred from [] receipt of the [] letter”); *see also Gallagher v. California Pacific*
8 *Title & Trust Co.*, 13 Cal. App. 2d 482, 493 (1939) (“The doctrine of constructive
9 knowledge of material facts . . . does not generally obtain in the case of ratification,
10 as ordinarily it is what the principal knows, and not what he has mere legal notice
11 of, that is to be considered in determining whether there has been ratification”).

12 *Reusche v. California Pacific Title Ins. Co.*, relied on by Plaintiff (Opp. 13-
13 14), is inapposite. In *Reusche*, the Court of Appeal held that a party could be liable
14 under a theory of ratification where she knew a check had a forged endorsement but
15 failed to apprise the bank, allowing the deposit to go through. 231 Cal. App. 2d 731,
16 737 (1965). By contrast, there are no allegations here that Sunnova ever accepted
17 any payment from Plaintiff, let alone that it had knowledge of an alleged forgery
18 when it did so. *See Dickenson v. Stevens*, 2011 WL 13217926, at *4 (C.D. Cal. Dec.
19 16, 2011) (applying California law) (finding “acceptance of the proceeds of the
20 deal” insufficient to establish ratification where nothing showed defendants “were
21 aware of all of the material facts at the time they accepted the proceeds of the
22 transaction”).

23 Finally, Plaintiff is wrong that Sunnova can be liable for Kuubix and
24 Mostafa’s actions under a theory of ratification because it “attempt[ed] to collect on
25 the fraudulent PPA from Plaintiff without investigating Plaintiff’s complaints of
26 fraud.” (See Opp. 14.) The FAC does not contain a single factual allegation stating
27 that Sunnova made any attempt to collect payment after Plaintiff notified it of “all
28 material facts of the fraud.” Plaintiff does not address this argument in his

1 Opposition either (*see* Mot. 15-16), but it, too, is fatal to his ratification claim. *See*
2 *Brown v. Rouse*, 104 Cal. 672, 675 (1894) (finding no ratification where defendant's
3 agent, without authority, executed note and mortgage purporting to bind her, and
4 defendant allowed agent to pay two installments of interest under belief that they
5 were binding); *see Allen*, 475 F. App'x. at 159.

6 Plaintiff's failure to allege authorization, ratification or any other theory of
7 agency requires dismissal of his fraudulent concealment claim in full.

8 **B. The Negligence Claim (Second Cause of Action) Is Also Deficient**

9 Plaintiff claims he has sufficiently pled negligence because Sunnova had a
10 duty "to disclose complete and accurate information to Plaintiff" and purportedly
11 failed to do so. (Opp. 17.) But Plaintiff fails to allege that Sunnova withheld
12 anything from him. Plaintiff alleges that he did not have any interaction with
13 Sunnova until months *after* he agreed to the Solar System installation, and that, once
14 Plaintiff finally interacted with Sunnova, Sunnova sent him the full written PPA,
15 replete with all personal identifying information. (FAC ¶¶ 52-58.)

16 Instead, Plaintiff admits that his negligence claim relies entirely on the same
17 deficient agency allegations as his fraudulent concealment claim, requiring dismissal
18 of this claim for the same reasons. (*See* Opp. 17; Section II.A., *supra.*); *see also*
19 *Sandry v. First Franklin Financial Corp.*, 2011 WL 202285, at *5 (E.D. Cal. 2011)
20 (applying California law) (dismissing negligence claim against lender on motion to
21 dismiss where plaintiff failed to allege that lender "had reason to know that
22 [p]laintiffs' loan application contained false information").

23 **C. Plaintiff Fails to State a CLRA Claim (Third Cause of Action)**

24 Plaintiff admits that his CLRA claim is dependent on his deficient agency
25 theory, arguing that Sunnova should be held liable because Plaintiff would not have
26 agreed to the installation of the Solar System absent Mostafa's statements that the
27 "solar panels would be free" and Mostafa's omission that there was "an expensive,
28 25-year PPA attached to the solar panels." (*See* Opp. 18.) Thus, this claim should be

1 dismissed for the same reasons that Plaintiff's fraudulent concealment and
2 negligence claims should be dismissed. (*See* Section II.A, B, *supra*.)

3 **D. The FCRA Claim Fails (Fourth Cause of Action)**

4 As Plaintiff admits, the FCRA contains a list of permissible reasons why a
5 party may obtain a credit report. (Opp. 18 (citing *Nayab v. Cap. One Bank (USA)*,
6 N.A., 942 F.3d 480, 495 (9th Cir. 2019).) Plaintiff argues he has sufficiently pled a
7 FCRA claim because he has alleged facts giving rise to a "reasonable inference" that
8 Sunnova did not run the report for any permissible purpose proscribed by the statute.
9 (*Id.*)

10 But, among the permissible purposes for which a party "may furnish a
11 consumer report" is "To a person which it has reason to believe . . . intends to use
12 the information in connection with a credit transaction involving the consumer . . .
13 and involving the extension of credit to, or review or collection of an account of, the
14 consumer." 15 U.S.C. § 1681b(a)(3)(A). "Notably, § 1681b(a)(3)(A) allows a third-
15 party to obtain a consumer's credit report without having a previous relationship
16 with the consumer and without the consumer initiating the transaction." *Nayab*, 942
17 F.3d at 488. Thus, in *Nayab*, relied on by Plaintiff (Opp. 18-20), the Ninth Circuit
18 held that, while a plaintiff is not required to plead a third party's actual unauthorized
19 purpose in obtaining a credit report, a plaintiff *is* required to allege "facts giving rise
20 to a reasonable inference that the defendant obtained his or her credit report in
21 violation of 1681b(f)(1) to meet their burden of pleading." *Nayab*, 942 F.3d at 493.

22 Here, Plaintiff has failed to plead sufficient "facts giving rise to a reasonable
23 inference that [Sunnova] obtained [his] credit report for a purpose not authorized by
24 the statute." *See Nayab*, 942 F.3d at 499. There are no allegations that Sunnova did
25 not have "reason to believe" at the time that it allegedly accessed Plaintiff's credit
26 report that Plaintiff had not legitimately executed the PPA or PPA Amendment and
27 applied for a Solar System. *See* 15 U.S.C. § 1681b(a)(3)(A). Indeed, the FAC
28 alleges that Plaintiff agreed to the installation of solar panels in or around August or

1 September 2022, and did not make any complaint to Sunnova until months *after* the
2 installation when he learned that Mostafa had lied to him about the cost of the solar
3 panels. (FAC ¶¶ 51-56.) Accepting these facts as true, the reasonable inference is
4 that at the time that Plaintiff ordered solar panels in August or September 2022,
5 Sunnova had a reasonable belief that Plaintiff had legitimately entered into a solar
6 panel transaction for which he needed credit. *See* 15 U.S.C. §1681b(a)(3)(A)
7 (permissible purpose includes where party has “reason to believe” it is accessing
8 credit for a consumer credit transaction); *see also Danfer-Klaben v. JPMorgan*
9 *Chase Bank, N.A.*, 2022 WL 3012528, at *3 (C.D. Cal. Jan. 24, 2022) (dismissing
10 FCRA claim where plaintiff failed to allege sufficient facts giving rise to a
11 reasonable inference that [the defendant] obtained her credit report for a purpose not
12 authorized by the statute”) (quoting *Nayab*, 942 F.3d at 499).

13 *Graham v. Sunnova Energy Int’l, Inc.*, cited by Plaintiff (*see* Opp. 19), is
14 therefore inapposite because, in that case, the plaintiff “explicitly” alleged that she
15 did not order solar panels and that she told the salesperson that she did not want her
16 credit check run, leading to a “reasonable inference” of a lack of permissible
17 purpose in then running the credit check. 2024 WL 871858, at *8. By contrast,
18 Plaintiff here alleges that he *did* order solar panels and does not allege that he ever
19 told anyone not to run a credit check. (FAC ¶¶ 43-52.) Only months later, after he
20 learned that Mostafa had misrepresented the cost of the solar panels, did Plaintiff
21 complain to Sunnova and say he did not want the solar panels. (*Id.* ¶ 53.)

22 *Nayab* does nothing to change the fact that the FCRA does not impose
23 liability on a party who has “reason to believe” that he or she is accessing a
24 consumer’s credit report for a permissible purpose. (*See* Mot. 20-22); *Nayab*, 942
25 F.3d at 495 (citing 15 U.S.C. § 1681b).³ The fact that Plaintiff did not hear of
26

27 ³ Plaintiff makes the bizarre argument that, under *Nayab*, Sunnova was required “to
28 explain” in its Motion what its authorized purpose was in accessing Plaintiff’s credit

1 Sunnova for over a year after it allegedly accessed his consumer report and that
2 Plaintiff did not consent to a credit report inquiry (Opp. 19) does nothing to change
3 this analysis. *See Danfer-Klaben*, 2022 WL 3012528, at *3 (finding allegations that
4 defendant company accessed plaintiff’s credit report “without written or verbal
5 authorization” insufficient to state a claim under the FCRA).

6 Moreover, insofar as Plaintiff claims that Mostafa’s knowledge that Plaintiff
7 did not legitimately order a Solar System is imputed to Sunnova through his
8 deficient agency theory, the FCRA claim fails for the same reason Plaintiff’s other
9 claims that rely on his deficient agency theory fail. (*See* Sections II.A-C.)

10 As Plaintiff alleges no facts remotely giving rise to a “reasonable inference”
11 that Sunnova did not have a reasonable belief at the time that it purportedly accessed
12 Plaintiff’s credit report that Plaintiff had not legitimately entered a solar panel
13 transaction for which he needed credit, he has not stated a claim under the FCRA.
14 *See* 15 U.S.C. § 1681b(a)(3)(A); *Nayab*, 942 F.3d at 499; *Danfer-Klaben*, 2022 WL
15 3012528, at *3.

16 **E. The Rosenthal Act Claim Is Too Conclusory To Survive a Motion**
17 **to Dismiss (Fifth Cause of Action)**

18 Plaintiff also fails to adequately address that the FAC does not contain a
19 single violation of the Rosenthal Act alleged with sufficient particularity. (Opp. 21);
20 *see Townsend v. Chase Bank*, 2009 WL 426393, at *2 (C.D. Cal. Feb. 15, 2009)
21 (“each alleged communication in violation of the FDCPA must be pled with
22 particularity”). Plaintiff attempts to distinguish *Townsend* by citing *Helber v.*

23 report was. (*See* Opp. 19, n. 5 (citing *Nayab*, 942 F.3d at 495).) What *Nayab*
24 actually says is that a consumer-plaintiff has the burden of alleging “facts giving rise
25 to a reasonable inference” that his or her credit report was obtained for a purpose not
26 authorized by the FCRA to survive a motion to dismiss. *See Nayab*, 942 F.3d at 493-
27 494. Assuming that burden is met and the complaint withstands dismissal, the
28 burden of persuasion then shifts to the defendant to plead as “justification or
exemption” an affirmative defense that it obtained the report for an authorized
purpose. *See id.* at 494-495.

1 *Nationwide Credit, Inc.*, 2010 WL 11595725, at *2 (C.D. Cal. Mar. 4, 2010), which
2 noted the *Townsend* plaintiff “did not include any specific information about [the]
3 communications or why they were deceptive.” *Id.* But Plaintiff’s allegations suffer
4 from the same deficiency. Plaintiff fails to allege that Sunnova ever initiated any call
5 or other correspondence to him to collect payment, only claiming that when he
6 called Sunnova for the first time Sunnova “demanded that Plaintiff make payments
7 on the alleged PPA.” (FAC ¶ 54.) Only after Sunnova made that alleged demand did
8 Plaintiff allegedly complain about the PPA or give any indication that he did not
9 want to be bound to it. There are no other factual allegations in the FAC that
10 Sunnova ever attempted to collect any payment from Plaintiff at any time. By
11 contrast, in *Helber*, the court found the allegations sufficient where plaintiff had
12 “alleged a specific volume of calls, a pattern of calling, and a phone number from
13 which the calls were made.” *Helber*, 2010 WL 11595275 at *2.

14 Plaintiff argues Sunnova violated the Rosenthal Act “because Plaintiff did not
15 agree to any PPA” and the Rosenthal Act prohibits “collecting debts not owed”
16 (Opp. 21), but Plaintiff ignores the myriad case law that Sunnova cited in its Motion
17 establishing that the mere allegation that a debt is not owed is a legal conclusion
18 insufficient to state a claim under the Rosenthal Act as a matter of law (Mot. 23).
19 Plaintiff’s allegations under the Rosenthal Act are plainly insufficient “to allow ‘the
20 court to draw the reasonable inference that the defendant is liable for the misconduct
21 alleged.’” *Helber*, 2010 WL 11595275 at *2 (quoting *Ashcroft v. Iqbal*, 566 U.S.
22 662, 663 (2009)).

23 **F. Plaintiff’s HSSA Claim Fails (Sixth Cause of Action)**

24 The HSSA provides buyers the right to cancel contracts within its purview
25 stating “the buyer has the right to cancel a home solicitation contract or offer until
26 midnight of the third business day . . . after the day on which the buyer signs” a
27 contract in compliance with the statute. Cal. Civ. Code §§ 7151, 7151.2,
28 1689.6(a)(1). The statute provides that “[c]ancellation occurs when the buyer gives

1 written notice of cancellation to the seller at the address specified in the agreement
2 or offer.” *Id.* § 1689.6(d).

3 Plaintiff argues Section 1689.6(a)(1) does not apply here because Sunnova
4 “never provided Plaintiff with a fully executed contract as required by Civil Code
5 1689.6(a)(2)” (Opp. 22), but the FAC itself alleges that Plaintiff received such an
6 agreement from Sunnova on June 22, 2023 (FAC ¶ 56). Plaintiff also claims that
7 Sunnova “has never complied with the HSSA” and he thus retained the right to
8 cancel at any time. (Opp. 22.) But the case Plaintiff cites in support involved a
9 written contract that “did not contain a notice of the buyer’s right to cancel” at all.
10 *See Weatherall Aluminum Prod. Co. v. Scott*, 71 Cal. App. 3d 245, 247 (1977). In
11 contrast, Plaintiff does not allege that the PPA he received did not contain a notice
12 of the right to cancel, but only that the entirety of the PPA was void because he
13 claims that he did not sign it. (*See* Opp. 23 (citing FAC ¶¶ 50-51, 63, 66).) Plaintiff
14 does not allege that he attempted to cancel the PPA within three days of receiving
15 the PPA, as the HSSA requires. (FAC ¶¶ 56, 61, 64); Cal. Civ. Code § 1689.6(a)(1).
16 Instead, Plaintiff purported to exercise his right to cancel some four months after he
17 received the PPA (FAC ¶¶ 56, 61), and for that reason, his HSSA claim should fail.

18 **G. Plaintiff Fails to State a Claim under Business and Professions**
19 **Code § 7150, et seq. (Seventh Cause of Action)**

20 In support of his Section 7150 claim, Plaintiff reiterates his same deficient
21 agency theory (*see* Opp. 24), which fails for the same reason it fails as to his other
22 claims. (*See* Sections II.A-D, *supra*.) And Plaintiff fails to even address Sunnova’s
23 argument that his vague, conclusory allegations regarding the PPA (“a host of other
24 Business and Professions Code 7161 violations”) fail to give Sunnova fair notice of
25 the claim and are insufficient as a matter of law. (*See* Mot. 25 (quoting FAC ¶ 136));
26 *Iqbal*, 556 U.S. at 678-681; *Allen*, 475 F. App’x. at 159 (arguments not addressed
27 are waived).
28

H. Plaintiff Fails to State a Claim Under the UCL, Bus. & Prof. Code § 17200, et seq. (Eighth Cause of Action)

Plaintiff's UCL claim fails under all three prongs of the UCL for the same reason his CLRA claim fails: he fails to allege reliance and his agency theory fails as a matter of law. *See Veera v. Banana Republic, LLC*, 6 Cal. App. 5th 907, 916 (2016) ("standing requirements of the CLRA are essentially identical to those of the UCL"); (*see* Section II.C, *supra*.) Sunnova explicitly made these arguments as to all three UCL prongs (unfair, fraudulent and unlawful) in its Motion (Mot. 17-19), and Plaintiff's statement that "Sunnova does not address" Plaintiff's allegation "that [Sunnova's] conduct also violates the 'unfair' and 'fraudulent' prongs of the UCL" is false on its face. (*See* Opp. 23-24.)

Plaintiff also fails to allege any violation of the unlawful prong because he has failed to sufficiently allege Sunnova violated any underlying law. Plaintiff fails to allege a violation of the UCL based on the CFPA claim because the claim is predicated on an unsupported theory of agency. (*See* Opp. 23; *see* Sections II.A-C.) And Plaintiff otherwise fails to provide any substantive argument or authority addressing any of Sunnova's arguments as to why Plaintiff has not pled a violation of an underlying law sufficient to satisfy the pleading standards of a UCL claim based on the unlawful prong. (Mot. 19-20.) As a result, Plaintiff has waived any argument to the contrary. *See United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir. 2010) ("Arguments made in passing and not supported by citations to the record or to case authority are generally deemed waived.").

III. CONCLUSION

Based on the foregoing, Sunnova respectfully requests that the Court dismiss the First Amended Complaint in its entirety. Moreover, the FCRA, HSSA and Rosenthal Act claims should be dismissed with prejudice, as Plaintiff has failed to show how they could be amended.

1 DATED: May 2, 2024

WAYMAKER LLP

2
3
4 By: /s/ Teresa L. Huggins

Ryan G. Baker

Teresa L. Huggins

6 Jose R. Nuño

7 *Attorneys for Defendant*

8 *Sunnova Energy Corporation*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
WAYMAKER